

§ 602.265

business submitter with notice of a request whenever:

(i) The business submitter has in good faith designated the information as commercially or financially sensitive information; or

(ii) The Farm Credit Administration has reason to believe that the disclosure of the information may result in commercial or financial injury to the business submitter.

(3) Notice of a request for business information falling within paragraph (d)(2)(i) of this section shall be required for a period of not more than 10 years after the date of submission unless the business submitter requests and provides acceptable justification for a specific notice period of greater duration.

(4) Whenever possible, the business submitter's claim of confidentiality should be supported by a statement or certification by an officer or authorized representative of the business submitter that the information in question is in fact a trade secret or commercial or financial information that is privileged or confidential.

(e) Through the notice described in paragraph (c) of this section, the Farm Credit Administration shall, to the extent permitted by law, afford a business submitter a reasonable period within which it can provide the Farm Credit Administration with a detailed statement of any objection to disclosure. Such statement shall specify all grounds for withholding any of the information under any exemption of the Freedom of Information Act and, in the case of the exemption provided by 5 U.S.C. 552(b)(4), shall demonstrate why the information is contended to be a trade secret or commercial or financial information that is privileged or confidential. Information provided by a business submitter pursuant to this paragraph may itself be subject to disclosure under the Freedom of Information Act.

(f)(1) The Farm Credit Administration shall consider carefully a business submitter's objections and specific grounds for nondisclosure prior to determining whether to disclose business information. Whenever the Farm Credit Administration decides to disclose business information over the objection of a business submitter, the Free-

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dom of Information Officer shall forward to the business submitter a written notice which shall include:

(i) A statement of the reasons for which the business submitter's disclosure objections were not sustained;

(ii) A description of the business information to be disclosed; and

(iii) A specified disclosure date.

(2) The notice of intent to disclose required by this paragraph shall be sent, to the extent permitted by law, within a reasonable number of days prior to the specified date upon which disclosure is intended.

(3) The Freedom of Information Officer shall send a copy of such disclosure notice to the requester at the same time the notice is sent to the business submitter.

(g) Whenever a requester brings suit seeking to compel disclosure of business information covered by paragraph (d) of this section, the Farm Credit Administration shall promptly notify the business submitter of such action.

[56 FR 28476, June 21, 1991]

Subpart C—Fees for Provision of Information

SOURCE: 56 FR 28477, June 21, 1991, unless otherwise noted.

§ 602.265 Definitions.

For the purpose of this subpart, the following definitions shall apply:

(a) The term *commercial use request* means a request for information that is from or on behalf of an individual or entity seeking information for a use or purpose that furthers the commercial, trade, or profit interests of the requester or on whose behalf the request is being made. To determine whether a request is properly classified as a commercial use request, the Farm Credit Administration shall determine the purpose for which the documents requested will be used. If the Farm Credit Administration has reasonable cause to doubt the purpose, specified in the request, for which a requester will use the records sought, or where the purpose is not clear from the request itself, the Farm Credit Administration

shall seek additional clarification before assigning the request to a specified category.

(b) The term *direct costs* means those expenditures the Farm Credit Administration actually incurs in searching for and reproducing documents to respond to a request for information. In the case of a commercial use request, the term also means those expenditures the Farm Credit Administration actually incurs in reviewing documents to respond to the request. The direct cost shall include the salary of the employee performing work (the basic rate of pay for the employee plus 16 percent of that rate to cover benefits) and the cost of operating reproduction equipment. Not included in direct costs are overhead expenses such as costs of space, and heating or lighting the facility in which the records are stored.

(c) The term *educational institution* means a preschool, a public or private elementary or secondary school, an institution of undergraduate higher education, an institution of graduate higher education, an institution of professional education, and an institution of vocational education that operates a program or programs of scholarly research.

(d) The term *non-commercial scientific institution* refers to an institution that is not operated on a commercial, trade or profit basis and that is operated solely for the purpose of conducting scientific research, the results of which are not intended to promote any particular product or industry.

(e) The term *representative of the news media* means any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public. The term *news* means information that is about current events or that would be of current interest to the public. Examples of news media entities include television or radio stations broadcasting to the public at large, and publishers of periodicals (but only in those instances when the periodicals can qualify as disseminators of "news") who make their products available for purchase or subscription by the general public. These examples are not intended to be all-inclusive. As traditional methods of news delivery evolve (e.g., electronic dis-

semination of newspapers through telecommunication services), such alternative media would be included in this category. "Freelance" journalists may be regarded as working for a news organization if they can demonstrate a solid basis for expecting publication through that organization even though they are not actually employed by the organization. A publication contract would be the clearest proof that a journalist is working for a news organization, but the Farm Credit Administration may look to a requester's past publication record to determine whether a journalist is working for a news organization.

(f) The terms *reproduce* and *reproduction* mean the process of making a copy of a document necessary to respond to a request for information. Such copies take the form of paper copy, microform, audio-visual materials, or machine readable documentation (e.g., magnetic tape or disk), among others. The copy provided shall be in a form that is reasonably usable by requesters.

(g) The term *review* means the process of examining documents located in response to a request for information to determine whether any portion of any document located is permitted to be withheld. It also includes processing any documents for disclosure (e.g., doing all that is necessary to prepare the documents for release). The term *review* does not include the time spent resolving general legal or policy issues regarding the application of exemptions. The Farm Credit Administration shall only charge fees for reviewing documents in response to a commercial use request.

(h) The term *search* includes all time spent looking for material that is responsive to a request for information, including page-by-page or line-by-line identification of material within documents. Searching for material shall be done in the most efficient and least expensive manner so as to minimize the costs of the Farm Credit Administration and the requester. For example, a line-by-line search for responsive material should not be performed when merely reproducing an entire document would be the less expensive and the

faster method of complying with a request for information. Searches may be done manually or by computer using existing programming. A “search” for material that is responsive to a request should be distinguished from a “review” of material to determine whether the material is exempt from disclosure.

§ 602.266 Categories of requesters—fees.

There are four categories of requesters: Commercial use requesters; educational and non-commercial scientific institutions; representatives of the news media; and all other requesters.

(a) The Farm Credit Administration shall charge fees for records requested by or on behalf of educational institutions and non-commercial scientific institutions in an amount which equals the cost of reproducing the documents responsive to the request, excluding the costs of reproducing the first 100 pages. For a request to be included in this category, requesters must show that the request being made is authorized by and under the auspices of a qualifying institution and that the records are not sought for a commercial use but are sought in furtherance of scholarly research (if the request is from an educational institution) or scientific research (if the request is from a non-commercial scientific institution).

(b) The Farm Credit Administration shall charge fees for records requested by representatives of the news media in an amount which equals the cost of reproducing the documents responsive to the request, excluding the costs of reproducing the first 100 pages. For a request to be included in this category, the requester must qualify as a representative of the news media and the request must not be made for a commercial use. A request for records supporting the news dissemination function of the requester shall not be considered to be a request that is for a commercial use.

(c) The Farm Credit Administration shall charge fees for records requested by persons or entities making a commercial use request in an amount that equals the full direct costs for searching for, reviewing for release, and re-

producing the records sought. Commercial use requesters are not entitled to 2 hours of free search time nor 100 free pages of reproduction of documents. In accordance with § 602.271, commercial use requesters may be charged the costs of searching for and reviewing records even if there is ultimately no disclosure of records.

(d) The Farm Credit Administration shall charge fees for records requested by persons or entities that are not classified in any of the categories listed in paragraphs (a), (b) or (c) of this section in an amount that equals the full reasonable direct cost of searching for and reproducing records that are responsive to the request, excluding the first 2 hours of search time and the cost of reproducing the first 100 pages of records. In accordance with § 602.271 requesters in this category may be charged the cost of searching for records even if there is ultimately no disclosure of records, excluding the first 2 hours of search time.

(e) For purposes of the exceptions contained in this section on assessment of fees, the word *pages* refers to paper copies of “8½ × 11” or “11 × 14.” Thus, requesters are not entitled to 100 microfiche or 100 computer disks, for example. A microfiche containing the equivalent of 100 pages or a computer disk containing the equivalent of 100 pages of computer printout meet the terms of the exception.

(f) For purposes of paragraph (d) of this section, the term *search time* has as its basis, manual search. To apply this term to searches made by computer, the Farm Credit Administration will determine the hourly cost of operating the central processing unit and the operator’s hourly salary plus 16 percent. When the cost of search (including the operator time and the cost of operating the computer to process a request) equals the equivalent dollar amount of 2 hours of the salary of the person performing the search, i.e., the operator, the Farm Credit Administration will begin assessing charges for computer search.

§ 602.267 Fees to be charged.

(a) Generally, the fees charged for requests for records shall cover the full allowable direct costs of searching for,